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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-206973 **DATE:** May 18, 1983

MATTER OF: John S. Phillips - Transportation of Household Goods - Actual Expenses

DIGEST:

1. Employee of Department of Energy made his own arrangements and shipped his household goods on October 1, 1981, under travel orders which stated that the "method of reimbursing household goods costs to be determined." Agency obtained a cost comparison from GSA after-the-fact in December 1981, and reimbursed employee for his actual expenses rather than the higher commuted rate. Under GSA regulation effective December 30, 1980, agency's action was proper since its determination was consistent with the purpose of the new regulation; to limit reimbursement to cost that would have been incurred by the Government if the shipment had been made in one lot from one origin to one destination by the available low-cost carrier on a GBL. Decisions of this Office allowing commuted rate prior to effective date of GSA regulation will no longer be followed.

2. Employee who made his own arrangements and shipped his own household goods on October 1, 1981, should not have his entitlement limited to the low-cost available carrier on the basis of a GSA rate comparison made 2 months after-the-fact. GSA regulations require that cost comparisons be made as far in advance of the moving date as possible, and that employees be counseled as to their responsibilities for excess cost if they choose to move their own household goods. However, cost of insurance must be recouped.

This decision concerns the claim of Mr. John S. Phillips, an employee of the Department of Energy, for reimbursement of household goods shipping expenses under

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the commuted rate schedule. The issue to be decided is whether the agency acted properly in limiting reimbursement to the actual cost by commercial bill of lading in lieu of the commuted rate.

In sustaining the agency's action we will focus on a significant regulatory initiative by the Administrator of General Services and establish a precedent for prospective application in decisions of this Office.

BACKGROUND

Briefly, Mr. Phillips' original travel order stated, "method of reimbursing household goods costs to be determined." However, at the time the agency contacted him to make arrangements and determine the method of shipment, Mr. Phillips had already made his own determination and arrangements and had shipped his household goods on October 1, 1981. Mr. Phillips paid $1,714.11 to ship 12,440 pounds of household goods, including $125 for insurance.

In order to determine Mr. Phillips' rate of reimbursement the agency obtained a cost comparison from the General Services Administration (GSA) in December 1981. The agency reports that since "Mr. Phillips had made his own arrangements, we paid his actual cost rather than the commuted rate for the maximum limit of 11,000 lbs. The commuted rate being much more than either the actual cost by commercial lading or the actual by Government Bill of Lading." As a result the agency reimbursed Mr. Phillips $1,515.69 representing the charges for shipping 11,000 pounds maximum weight including a proportionate share of the insurance. Mr. Phillips is reclaiming the difference between the amount reimbursed and the commuted rate of $2,743.40, or $1,227.71.

STATEMENT OF THE ISSUE

Our review of reimbursement authorities applicable to Mr. Phillips' claim focuses on Temporary Regulation A-12 of the Federal Property Management Regulations, which established the centralized household goods traffic management program. In connection with that program paragraph 6b of Temporary Regulation A-12 requires an

agency to obtain from the nearest GSA regional office, a cost comparison of the two methods of reimbursing an employee for shipment of his household goods--the actual expense method, and the commuted rate method. Under the actual expense method the Government assumes responsibility, whereas under the commuted rate the employee makes his own arrangements. Agencies make the final determination as to the method of shipment to be used based on the cost comparison. More particularly, 41 C.F.R. § 101-40.203-2(b) of Subpart 101-40.2 "Centralized Household Goods Traffic Management," published on December 30, 1980, at 45 Fed. Reg. 85755, prescribes that when the actual expense method is authorized as the most economical means of shipment and the employee chooses to move all or part of the household goods by some other means, reimbursement will be limited to the cost that would have been incurred by the Government if the shipment had been made in one lot from one origin to one destination by the available low-cost carrier on a Government Bill of Lading (GBL).

Decisions of this Office on claims arising before the December 30, 1980, effective date of Temporary Regulation A-12 do not permit comparative ceilings on commuted rate reimbursement. Recently in Chester C. Bryant, B-206844, July 7, 1982, we held that an employee who moved his household goods upon transfer in November 1979, and whose reimbursement was limited to the comparative cost of shipment by GBL, was entitled to reimbursement under the commuted rate. This followed from our determination that since the agency did not authorize and ship his goods, application of comparative actual expenses under a GBL as a ceiling was incorrect. In Raymond C. Martin, B-196532, July 7, 1980, we were faced with a similar situation. An employee was authorized transportation of household goods on an actual expense basis via a GBL but the travel authorization was subsequently amended to allow the employee to move himself. The employee was reimbursed the actual out-of-pocket expenses he incurred in the move, but he made a claim for the difference between his expenses and the cost of a move by GBL. We held that the agency was incorrect in reimbursing the employee on an actual expense basis stating that the employee should be reimbursed the commuted rate. We based our determination

on William K. Mullinax, B-181156, November 19, 1974, in which we held that there is no authority for reimbursement to an employee on an actual expense basis unless his agency has both authorized and shipped his effects on a GBL. In that case we also held that if an employee cannot be reimbursed under the actual expense basis he is entitled to reimbursement under the commuted rate in order to preserve his right to reimbursement of the shipment of his household goods as conferred in 5 U.S.C. § 5724(a)(2)(1976). See also Andres Villarosa, B-201615, September 1, 1981. Thus in the past, our decisions have held that where household goods are not shipped on a GBL the commuted rate basis necessarily is for application to preserve the employee's rights under 5 U.S.C. § 5724(a)(2); we have said that an employee has a statutory right to the commuted rate in those circumstances.

NEW GSA REGULATIONS

In furtherance of our substantive review of this statutory entitlement issue we asked for the views of the Administrator of General Services regarding the regulatory initiative for reimbursing household goods shipping expenses for employees who make their own transportation arrangements and whose goods are not shipped by GBL.

By letter dated January 5, 1983, the Director, Policy Development and Analysis Division, Office of Personal Property, GSA, responded to our request, in large part as follows:

> "[T]he Administrator, through Executive Order 11609, has authority under 5 U.S.C. 5724 to prescribe regulations regarding the employee's entitlement to, and the Government's payment for, the expenses of transporting, temporarily storing, etc. the transferred employee's household goods between duty stations. Although there is no specific direction or prohibition as to the means of payment for these expenses, the terminology 'payment of expenses' used in 5 U.S.C. 5724(a)(2) is generally interpreted

to mean actual expense basis. The provisions of 5 U.S.C. 5724(c) deal with methods of payment stating that instead of being paid for the actual expenses of transporting, storing, etc., the employee shall be reimbursed on a commuted basis.

"While the legislative history indicates the term 'payment of actual expenses' in 5 U.S.C. 5724(c) was intended to authorize the agency to use the GBL when the payment of actual expenses was found to be more economical than the commuted rate basis, we find no indication in the statute or legislative history which would prohibit the payment of actual expenses by means other than through the use of a GBL. Thus, when an agency authorizes actual expenses and the use of a GBL for the shipment of household goods and the employee makes his/her own arrangements, we find nothing which would preclude actual expense reimbursement to the employee. However, without a regulatory limitation to the GBL costs, actual expense reimbursement to the employee could become more costly than the commuted rate reimbursement.

"However, as provided in 41 CFR 101-40.203-2, when the employee chooses for personal reasons to ship his/her own household goods by some other means, actual expense reimbursement to the employee then becomes limited to the actual expense amount that the shipment would have cost the Government had the agency shipped the household goods on a GBL, as authorized.

"Under the provisions of both 41 CFR 101-40.203-4 and paragraph 2-8.3c(4)(a) of the Federal Travel Regulations (FTR), the determination as to the use of the commuted rate or the actual expense method must be based on a cost comparison of the

two methods. Although not specifically stated, this determination should be made by the agency in a timely manner, related to the employee, and reflected in the employee's travel authorization. These actions should be accomplished as far in advance of the employee's expected reporting date as possible so that adequate time is available to make carrier shipping arrangements and also so the employee is aware of his/her authorized allowances and any limitations or restrictions being placed on the allowance.

"The regulations do not contemplate that an agency should obtain a cost comparison after the fact merely for purposes of limiting reimbursement to the employee. Unless some unusual circumstances are present in a particular case, the provisions of 41 CFR 101-40.203-2(b) should not be applied after a household goods shipment has been completed by the employee."

CONCLUSION

Federal agencies must act within the authority granted to them by statute in issuing regulations. However, as a general rule, published regulations are deemed to be within an agency's statutory authority and consistent with Congressional intent unless shown to be arbitrary or inconsistent with the statutory purpose, since the construction of a statute by those charged with its execution is to be followed unless there are compelling indications that it is wrong. See generally, 58 Comp. Gen. 635 (1979); 56 Comp. Gen. 943 (1977). Thus, we have reasoned that regulations which have properly been issued by an agency under a statutory grant of authority have the force and effect of law. See B-201706, March 17, 1981, citing 43 Comp. Gen. 516, 519 (1964).

In view of the above, and bearing in mind that our decisions requiring unlimited payment of commuted rate expenses where an employee is reimbursed under 5 U.S.C. § 5724(a)(2) were based on our interpretation of the authorizing statute and not an express requirement in the law, we find no basis to challenge the new GSA regulation.

However, we agree with GSA that, under the circumstances of this case, the employee's reimbursement should not be limited to the lowest-cost carrier when a rate comparison is made after-the-fact.

Mr. Phillips was authorized shipment of his household goods on September 25, 1981, by a method of reimbursement to be determined later. His shipment was picked up on October 1, and delivered on October 3, 1981. The DOE did not obtain a GSA rate comparison until November 30, 1981, based on an estimated move date of December 2, 1981. However, GSA regulations require that requests for cost comparisons be made as far in advance of the moving date as possible (preferably 30 days). 41 C.F.R. § 101-402.203-4(b) (1981). Further, agencies are cautioned to counsel employees as to their responsibilities for excess cost if they choose to move their own household goods. See 41 C.F.R. § 101-40.203-2(c) (1981). Therefore, we do not believe that an agency rate determination made 2 months after the shipment was picked up and delivered should be used as a basis to limit the employee's entitlements to the low-cost available carrier. Nor do we believe that the employee should receive an entitlement above his actual costs. This would have the effect of nullifying the purpose of the new GSA regulations; to limit reimbursement to the cost that would have been incurred by the Government if the shipment had been made in one lot from one origin to one destination by the available low-cost carrier on a GBL. See 41 C.F.R. § 101-40.203-2(b) (1981). Decisions of this Office that allowed the commuted rate prior to the effective date of the GSA regulations will no longer be followed.

Accordingly, under the regulatory authority reviewed above which was applicable at the time of Mr. Phillips household goods move, and where Mr. Phillips determined for personal reasons to make arrangements for and ship his own household goods, the agency properly limited reimbursement to his actual expenses.

Finally, the administrative record indicates that the agency reimbursed Mr. Phillips an additional amount as a "proportionate share of the insurance" on the shipment of his household goods. Mr. Phillips may not be reimbursed for the charge. Under para. 2-8.4e(3) of the Federal

Travel Regulations, FPMR 101-7 (May 1973), an employee may place a value on his household goods higher than the carrier's minimum insured valuation, but the cost of that added value is the employee's responsibility. Joel T. Halop, B-195953, June 5, 1980. Accordingly, such sums paid to Mr. Phillips must be recouped by the agency.

for Milton J. Socolar
Comptroller General
of the United States